IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11413 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

SUBHASHCHANDRA MAGANLAL CHAUHAN - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/09/2005

ORAL JUDGMENT

1. In this petition, the petitioner-S.T. Corporation has challenged the legality of the award dated 27th April, 2004 passed by the Labour Court, Surat. By the impugned

award the Labour Court was pleased to allow the reference of the respondent-workman partially. Order of dismissal passed by the petitioner was substituted by the penalty of reinstatement without back wages and by withholding of three increments with permanent effect.

2. Respondent who was employed as a Driver and who joined the duty in December, 1996 was proceeded against in departmental inquiry for having remained unauthorizedly absent on 13/7/1999. In response to the charge sheet issued by the petitioner, respondent gave no reply. During the pendency of the departmental proceedings also the respondent did not resume duty. Eventually, upon conclusion of the ex-parte inquiry the disciplinary authority ordered dismissal of the respondent on 25th October, 1999. The respondent challenged his dismissal before the Labour Court. The Labour Court in its impugned award specifically observed that though the respondent had indicated his illness as the reason for remaining absent, he has not produced medical certificate either before the Corporation or before the inquiry officer during the departmental proceedings, the Labour Court, therefore, concluded that the workman failed to establish his illness as a ground

for remaining absent. In fact the Labour Court concluded that the workman remained absent for some other reason unauthorisely. The Labour Court, therefore, held that the charges against the respondent were proved. The Labour Court also observed that earlier on two occasions the respondent was dismissed from service on the ground of unauthorised absence. The Court however, found that other than these two instances of misconduct there was no other misconduct proved against the respondent. In that view of the matter, the Labour Court found that the order of punishment of dismissal is excessive. In exercise of power under Section 11 A of the Industrial Disputes Act, therefore, the Labour Court found proper to substitute punishment by one of withholding of three increments with permanent effect. The workman was ordered to be reinstated without back wages.

3. From the material on record, it can be seen that apart from the unauthorised absence between July to October, 1999, the respondent had remained absent from 19/7/1997 to 7/10/1997 for which he was initially dismissed from service. However, he was later on reinstated. Once again he remained absent from 4/7/1998 to 5/8/1998 for which misconduct also he was dismissed

from service. But later on reinstated. It can thus be seen that in a short span of three years of service the respondent remained unauthorisedly absent on three different occasions for which departmental inquiries have been conducted against him. The different spells of unauthorised absence were for a substantial number of days which ultimately culminated into penalties being imposed upon him. Twice earlier the employer granted him leniency by recalling the order of dismissal passed by the disciplinary authority. Once again on third occasion he remained absent unauthorisely from 13/7/1999 and was absent even while the inquiry proceedings were being conducted against him which ultimately culminated into his dismissal order dated 25th October, 1999. The workman did not even participate in departmental inquiry to put-forth his defence of being indisposed to be able to resume duty. His defence of illness was in terms disbelieved by the Labour Court. The workman produced no material to establish that he was unable to resume duty on account of sickness. In that view of the matter, in my opinion, the Labour Court erred in interfering with the punishment awarded by the employer. As noted earlier the respondent had remained unauthorisedly absent on three extended spell in a short span of three years since

his appointment. Earlier two chances given to him to improve his conduct were not availed of.

4. Reliance was placed by learned Advocate Shri Raval for the petitioner on the decision of the Hon'ble Supreme Court in the case of **Delhi Transport Corporation vs. Sardar Singh reported in (2004) 7 SCC 574**. In the said decision the Hon'ble Supreme Court took serious view of habitual or continued absence from duty without sanctioned leave. Reliance was placed on the decision of Division Bench of this Court in the case of **M.L.Chauhan vs. Divisional Controller, G.S.R.T.C reported in 1999 (1) GLH 527** wherein the Division Bench observed that absence from duty in cases where the employees connected with public service cannot be tolerated.

5. In the present case, I find that the absence of the respondent was long and he had shown certain chronic tendency to remain absent without authorization. The Labour Court, therefore ought not to have interfered with the award of penalty chosen by the petitioner. It may be noted that the Labour Court observed that on account of unauthorised absence of the respondent, the administration would be put into considerable hardship.

It may also be noted that before the Labour Court the respondent admitted the legality of the departmental inquiry.

6. In view of the above discussion, I find that the award of the Labour Court is required to be set aside.

7. In the result petition is allowed. Impugned award of the Labour Court dated 27th April, 2004 is set aside. Rule is made absolute. NO order as to costs.

(Akil Kureshi, J.)

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